

MANDATE

NHCT
01-cv-996
Thompson

06-4972-cv
Henwood v. Unisource Worldwide

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

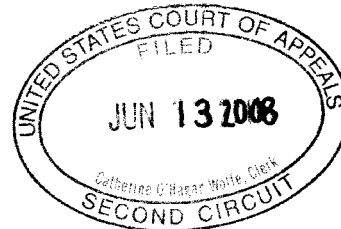
SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 13th day of June, two thousand and eight.

PRESENT:

HON. AMALYA L. KEARSE,
HON. GUIDO CALABRESI,
HON. ROBERT D. SACK,
Circuit Judges.



DAVID D. HENWOOD,
Plaintiff-Appellant,

-v.-

No. 06-4972-cv

UNISOURCE WORLDWIDE, INC. and GEORGIA PACIFIC CORP.,
Defendants-Appellees.

JUL 10 2008

1 FOR PLAINTIFF-APPELLANT: DANIEL M. YOUNG (David M. Cohen, *on the*
2 *brief*), Wofsey, Rosen, Kweskin & Kuriansky, LLP,
3 Stamford, Conn.

4
5 FOR DEFENDANTS-APPELLEES: C. RANDOLPH SULLIVAN (Kimberlee W.
6 DeWitt, *on the brief*), Hunton & Williams, LLP,
7 Richmond, Va.
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10 **UPON DUE CONSIDERATION** of this appeal from a judgment entered in the United
11 States District Court for the District of Connecticut (Thompson, *J.*), it is hereby **ORDERED**,
12 **ADJUDGED**, and **DECREED** that the judgment of the District Court is **AFFIRMED**.
13

14
15 Plaintiff-Appellant David D. Henwood (“Henwood” or “Appellant”) appeals from
16 an October 5, 2006 judgment of the United States District Court for the District of
17 Connecticut (Thompson, *J.*) granting summary judgment to Defendants-Appellees
18 Unisource Worldwide, Inc. and Georgia Pacific Corp. (together, “Unisource”) on
19 Appellant’s claims under the Age Discrimination in Employment Act (“ADEA”), 29
20 U.S.C. § 621 *et seq.*, the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. §
21 46a-60(a)(1), Connecticut’s wage statutes, Conn. Gen. Stat. §§ 31-71c, 31-71e,
22 Connecticut’s statute recognizing the remedy of an accounting, Conn. Gen. Stat. § 52-401
23 *et seq.*, and various common law theories of liability. We assume the parties’ familiarity
24 with the procedural history, facts, and relevant issues on appeal.

25 This Court reviews a district court’s grant of summary judgment *de novo*. *New*
26 *York v. Nat’l Serv. Indus.*, 460 F.3d 201, 206 (2d Cir. 2006). “[S]ummary judgment is
27 appropriate where there exists no genuine issue of material fact and, based on the
28 undisputed facts, the moving party is entitled to judgment as a matter of law.” *D’Amico*
29 *v. City of New York*, 132 F.3d 145, 149 (2d Cir. 1998); *see also* Fed. R. Civ. P. 56(c). In
30 determining whether there is a genuine issue of material fact, we must resolve all

1 ambiguities, and draw all inferences, against the moving party. *Donahue v. Windsor*
2 *Locks Bd. of Fire Comm'rs*, 834 F.2d 54, 57 (2d Cir. 1987). Mere speculation and
3 conjecture are insufficient to avoid summary judgment. *W. World Ins. Co. v. Stack Oil,*
4 *Inc.*, 922 F.2d 118, 121 (2d Cir. 1990).

5 For substantially the reasons stated in the District Court's thorough opinion, *see*
6 *Henwood v. Unisource Worldwide, Inc.*, Civ. No. 3:01cv0996 (AWT), 2006 WL
7 2799589, at *14-19 (D. Conn. Sept. 29, 2006), we hold that Appellant's state and
8 common law claims were properly dismissed.

9 Regarding Henwood's federal age discrimination claim, we affirm the grant of
10 summary judgment to Unisource because, assuming *arguendo* that Henwood made out a
11 *prima facie* case of age discrimination, thereby satisfying the first prong of our three-
12 prong burden-shifting framework, *see D'Cunha v. Genovese/Eckerd Corp.*, 479 F.3d 193,
13 194-95 (2d Cir. 2007), Henwood has failed to offer sufficient evidence to satisfy the third
14 prong. That is, he has not presented evidence sufficient to allow a reasonable juror to
15 find that the legitimate, non-discriminatory explanations that Unisource offered for each
16 of the alleged adverse employment actions "were not the only reasons and that the
17 prohibited factor was at least one of the 'motivating' factors." *Back v. Hastings on*
18 *Hudson Union Free Sch. Dist.*, 365 F.3d 107, 123 (2d Cir. 2004) (quotation marks and
19 citation omitted). Unisource explained (1) that it removed Henwood from the
20 Watchtower Bible and Tract Society ("Watchtower") account because Watchtower
21 refused to work with him or any other sales representative; (2) that it did not pay him any
22 commissions on the Webservice account with Watchtower because this account was
23 different from the Watchtower account that Henwood had serviced and because
24 Watchtower insisted that no sales representative receive commissions from the orders it

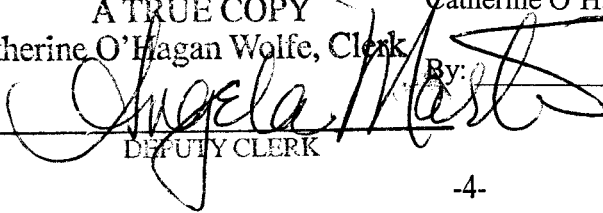
1 placed with Webservice; (3) that it did not pay him a percentage of the commissions it
 2 subsequently received from Fraser Papers, Inc. ("Fraser") based on Fraser's direct sales to
 3 Watchtower because it believed those payments to be "disengagement fees," attributable
 4 to Fraser's desire to maintain its relationship with Unisource, not to Henwood's prior
 5 activities on the Watchtower account; (4) that the President of Webservice, Jim O'Toole,
 6 offered Henwood a salaried trial period of six months (ending around his sixty-fifth
 7 birthday) because, based on experience with another salesman, O'Toole believed six
 8 months to be a reasonable amount of time for Henwood to transition onto other accounts;
 9 and (5) that Unisource did not make subsequent arrangements for Henwood because he
 10 resigned before O'Toole had an opportunity to assess Henwood's future role at the
 11 company. Of these legitimate, non-discriminatory explanations, Henwood has called into
 12 question the fourth (through his sworn testimony that O'Toole prevented him from
 13 developing new accounts), but this brings him no closer to showing that unlawful
 14 discrimination was one of Unisource's motivating factors. Therefore, he cannot meet his
 15 burden. *See Fagan v. N.Y. State Elec. & Gas Corp.*, 186 F.3d 127, 135 (2d Cir. 1999)
 16 ("[E]ven if we view the evidence as creating an issue of fact on pretext, appellant must
 17 point to evidence from which a fact-finder could infer that the pretext was masking
 18 unlawful discrimination." (internal quotation marks omitted)).

19 We have considered all of Appellant's arguments, and we find them without
 20 merit. Accordingly, the judgment of the District Court is AFFIRMED.

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FOR THE COURT:
 Catherine O'Hagan Wolfe, Clerk of the Court

A TRUE COPY
 Catherine O'Hagan Wolfe, Clerk

By:  _____
 DEPUTY CLERK